

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4433-04
Bill No.: SCS for SB 469
Subject: Administrative Rules; Administrative Law; State Departments
Type: Original
Date: January 30, 2012

Bill Summary: This proposal requires review of all administrative rules and modifies provisions regarding the awarding of certain fees in administrative actions.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
General Revenue	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on General Revenue Fund	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 13 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on FTE	0	0	0

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☐ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Joint Committee on Administrative Rules** state this legislation will have a fiscal impact on their agency. There is an anticipated increase in the workload of the Joint Committee that will occur upon the passage of this legislation, due to the necessity to facilitate and monitor compliance with the provisions of the legislation. There may also be increased rulemaking activity in response to reviews conducted by state agencies as a result of the legislation. However, any anticipated fiscal impact within the time period projected by this fiscal note should be able to be absorbed within current appropriations.

Officials from the **Office of the Secretary of State (SOS)** assume, based on calculations of how many pages will be required to print the notices of agency review/delinquency, this bill could likely require an additional 100 pages in the Missouri Register beginning in fiscal year 2015. The estimated cost of a page in the Missouri Register is \$23.00. Our division calculates that, as a result of the requirements that agencies review their rules, between one third and one half of rules could become null and void. Based on calculations of how many pages will be required to print the new status of such rules, this bill could require an additional 1,350 pages in the Code of State Regulations. The estimated cost of a page in the Code of State Regulations is \$27.00. The actual cost could be more or less than the numbers given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules amended, rescinded, or withdrawn. The SOS estimated a costs of roughly \$40,000 per year to the General Revenue Fund as a result of this proposal.

Officials from the **Office of the State Public Defender, Department of Transportation, Administrative Hearing Commission, Office of the State Courts Administrator, Department of Public Safety** (Divisions of **Highway Patrol, Fire Safety, Capitol Police, Missouri Veterans Commission, Alcohol and Tobacco Control** and the **State Emergency Management Agency**) and the **Missouri Consolidated Health Care Plan** each assume the proposal would not fiscally impact their respective agencies.

In response to a previous version of this proposal, officials from the **Missouri Ethics Commission, State Tax Commission**, and the **Office of Prosecution Services** assumed the proposal would not fiscally impact their respective agencies.

Officials from the **Department of Higher Education** assume the proposal could be implemented utilizing existing resources and would, therefore, have no direct foreseeable fiscal impact on their department

ASSUMPTION (continued)

In response to a previous version of this proposal, officials from the **Office of Administration (COA)** stated the proposal is expected to have a fiscal impact five years following implementation, due to the volume of sunset rules beginning in the sixth year following implementation. The number of rules requiring review would increase each year thereafter. COA may require additional legal and support staff to conduct reviews and reestablish rules through the rulemaking process. The impact is unknown. Additional analysis is needed to determine specific cost estimates. The proposal could impact other state departments. In Fiscal Year 2010, state agencies filed approximately 530 proposed rules and 640 final orders of rulemaking.

Officials from the **Missouri Gaming Commission (MGC)** state they are in constant review and revision of it hundreds of administrative rules to regulate the gaming industry. This legislation would require the MGC to add several full time staff and greatly expand each Commission meeting hearing agenda to handle the workload of sun-setting and resubmitting rules to the Secretary of State to be in compliance with the legislative provisions of the bill.

Officials from the **Department of Elementary and Secondary Education** state the fiscal impact is unknown. The expected impact will occur beyond the scope of the fiscal note, beginning in 2015 with the first round of expirations. In succeeding years, the number of rules requiring review will increase. We will likely require additional staff to perform the reviews and promulgate rules.

Officials from the **Missouri Department of Conservation (MDC)** assume an unknown fiscal impact from the proposal - likely less than \$100,000. MDC states they have a constitutional authority for formulating the Wildlife Code of Missouri. Requiring rules to expire after 5 years appears to impose additional costs and complexity to reinstate appropriate sections of the Wildlife Code and would make regulations less consistent and more complex for the public.

Officials from the **Missouri Lottery** state when the review process begins in 2015, an additional FTE may be required. In addition, fiscal impact of the awarded fees and expenses per line 26 is an unknown negative. Whatever amount is required to be paid out in fees and expenses pursuant to this bill would reduce Lottery proceeds transferred to education.

Officials from the **Department of Economic Development (DED)** state this proposal would result in a negative fiscal impact of less than \$100,000 each year. DED states this assumed cost is based on the provision that would subject agencies to pay damages against its annual appropriation in the event a court finds in favor of a petitioner. Other costs are related to the

ASSUMPTION (continued)

review of agency rules and the preparation of an annual report that are not expected to require a new FTE but would require the resources of existing personnel.

In response to a previous version of this proposal, officials from the **Department of Labor and Industrial Relations (DOLIR)** stated the proposed legislation enacts Section 536.175, which would automatically terminate future rules ten years after their effective date. All current rules would expire over a five year period, starting in June 2015. DOLIR would have approximately eight years to review and republish all of its current rules.

In addition to republication of the current rules, DOLIR is required to ascertain the following:

- Whether a less restrictive, more narrowly tailored or alternative rule could adequately protect the public or accomplish the same statutory purpose; and
- Whether the rule needs amendment or rescission to reduce regulatory burdens on individuals, businesses, or political subdivisions or eliminate unnecessary paperwork.

DOLIR administers 10 chapters within the Missouri Revised Statutes, Chapters 285-295 RSMo. Most of these chapters concern laws that affect groups with competing interests. When DOLIR seeks to promulgate a rule, or amend a rule, competing interests result in additional staff time and labor in promulgating, or amending a rule.

DOLIR estimates that if amendment of a rule is not opposed, it takes approximately 10 hours of clerical time to publish the rule. There is also approximately 15 hours of attorney time in dealing with the clerical side and the administrative side. In addition, there is approximately 25 hours expended by staff who administer the law and the rule.

There are times, however, when rules are very controversial. It is unclear which rules can be amended without controversy and which rules will be an enormous drain on resources. Therefore, DOLIR estimates it takes twice as long to amend an opposing rule. DOLIR currently has 163 rules. As such, DOLIR will be amending approximately 20 rules a year.

DOLIR estimates at least 400 hours of clerical time, 600 hours of attorney time and 1,000 hours of administrative time. When additional rules are promulgated over the years, the labor time will be increased because of the bill. Therefore, DOLIR would need a part time clerical and part time attorney to handle the additional workload.

DOLIR estimated costs of roughly \$60,000 per year for the three years contained in the fiscal note.

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ASSUMPTION (continued)

Officials from the **Department of Agriculture (AGR)** state this bill requires a review every five years each of its 79 different Chapters of regulations necessary to the operation of its programs, and to file a report addressing the eight (8) categories of review specified in 536.175.4. As a regulatory agency, many of AGR's rules are very technical and complex. A thorough review and report on each of the 79 different Chapters of AGR rulemaking would require additional staff and legal time to review, re-promulgate, and meet the reporting requirements of the legislation. Although the exact costs are unknown, it would likely exceed \$100,000 beginning in 2015 since the Department's rules are in Title 2 and would be included in the first group of rules to be reviewed under this bill.

Officials from the **Department of Mental Health (DMH)** assume that the process of responding to rule change petitions will require additional resources. It further assumes that the process of reviewing and re-promulgating rules will be consistent with existing procedures; requiring service provider and small business impact statements, anticipated cost calculations and subsequent reviews for actual costs, etc. Existing resources are not expected to be sufficient for this additional responsibility. At this time DMH resources are deployed to prepare fiscal notes for proposed legislation, proposed initiative petitions, proposed administrative rules, and amendments to administrative rules. It is expected this process will require at least two additional staff, including one staff attorney.

It is not known how many petitions the Department of Mental Health can expect to receive during a fiscal year in addition to those requiring regular review. Also, the addition of Section 536.087, which adds that further penalties to state agencies could be incurred, could result in an increase in costs to the DMH; therefore, the fiscal impact is expected to be an unknown cost of more than \$100,000.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** assume the proposal would have no fiscal impact in the fiscal years reflected in the fiscal note. DIFP believes existing FTE can implement the scheduled review of department rules beginning in FY2020 and the petition responses required in this bill. Among other purposes, department rules establish professional licensee requirements, are a requirement for state insurance accreditation and give protections to Missouri consumers. However, if the scheduled review and petition process is more time consuming than anticipated additional FTE will be requested through the budget process.

Regarding Sections 536.041.2 and 536.087; if a legal award is larger than current appropriations would allow, DIFP would not be able to pay the award unless the department could request an increase in the department's ongoing operating appropriation in the next fiscal year budget

ASSUMPTION (continued)

process.

Officials from the **Department of Corrections (DOC)** state passage of this bill will potentially require additional legal counsel/staff in order to comply with the new requirements of Section 536.041 and the review of rules as required by Section 536.175. In summary, the fiscal impact for DOC is a negative unknown for each fiscal year.

Officials from the **Department of Revenue (DOR)** state with the changes in this substitute, DOR rules falling within Titles 11 through 14 will not begin the review process until fiscal year 2018. Based on this, the below impact identifies personnel that will be required during FY 2017 for the required training prior to beginning the review process. Total impact of the below personnel, in FY 2015 dollars, is approximately \$340,000.

Section 536.175

Legal:

- All rules will require review beginning July 1, 2017 (FY-18). In order to ensure rules can be reviewed by qualified personnel, FTE will be required in fiscal year 2017.
- This legislation will create a need for additional FTE legal counsel and one (1) FTE senior office support assistant (SOSA). The personnel would be required in Fiscal Year 2017.

Taxation:

- This legislation will create a need for additional Management Analysts to accomplish the additional work of renewing regulations. The following personnel would be required in Fiscal Year 2017. Two (2) Management Analyst Specialist I (Range 23, Step N) per 25 rules to be amended, rescinded, or written. Based on current workload there are between 40-50 rules that require revisions. Thus, two (2) Full-Time Equivalents would be required.

Motor Vehicle and Driver Licensing Division:

- There will be an impact on the Motor Vehicle and Driver Licensing Division during the period of the fiscal note beginning Fiscal Year 2017.
- This legislation will create a need for an additional Management Analyst Specialist I once the termination period starts coming up in order to accomplish the additional work of renewing regulations.
 - One (1) Management Analyst Specialist I (Range 23, Step N) Full-Time Employee (FTE) would be required.

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ASSUMPTION (continued)

Officials from the **Department of Natural Resources (DNR)** state they have approximately 700 existing rules which would require review and possible rulemaking action. DNR does not have sufficient existing resources to implement the requirements of this proposal.

The Department of Natural Resource - Division of Environmental Quality (DEQ) assumes approximately 16 professional FTE (Environmental Specialist III [ES III], PS & EE costs = \$1,370,804) would be requested to implement this proposal. A start FY 2016 start date is assumed to allow training time and advance rulemaking preparation to begin the work as required on July 1, 2016. Assuming that 1 year is sufficient to ramp up to accomplish the necessary tasks is a conservative estimate.

DNR currently does not have funding available to support the additional work efforts required by this bill. General Revenue would be needed to fund this program.

DEQ's FTE Calculation: $651 \text{ rules} / 5 \text{ years} = 130 \text{ rules a year}$

$6 \text{ rules per FTE per year} = 130 / 6 = 22 \text{ FTE}$

Minus 6 existing FTE = 16 FTE

The department further assumes that an additional (1) Legal Counsel FTE with experience in environmental law as a result of Section 536.041 of this proposal.

DNR's Soil and Water Conservation Program (SWCP) has 30 current rules with the following breakdown under the SB 469 projections.

Sub Para 1) 6/30/2015 - 10 rules

Sub Para 2) 6/30/2016 - 2 rules

Sub Para 3) 6/30/2017 - 2 rules

Sub Para 4) 6/30/2018 - 12 rules

Sub Para 5) 6/30/2019 - 0 rules

Sub Para 6) 6/30/2020 - 4 rules

The SWCP does not have sufficient staff available to absorb the efforts outlined in this proposal. One (1) ES III would be required to coordinate and undertake additional rulemaking efforts. This person would be responsible for tracking rules, reviewing the need for existing rules, coordinating the stakeholder processes and undertaking the repromulgation of needed rules.

DNR's Division of Geological Land Survey (DGLS) stated that currently most rules they are responsible for are updated infrequently. The DGLS does not have sufficient staff available to

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ASSUMPTION (continued)

essentially double the efforts spent on this activity. The DGLS would request one Planner II (PS & EE costs approximately \$81,881) who would be required to coordinate and undertake additional rulemaking efforts. This person would be responsible for tracking rules, reviewing the need for existing rules, coordinating the stakeholder processes and undertaking the repromulgation of needed rules.

Currently, DNR's Division of State Parks has 16 regulations, but this legislation would still be time-consuming. Initially examining their regulations would require at least one staff member to devote significant time to the project if no additional FTE is available. If citizens begin petitioning DSP to make rule changes, the work load on that staff member could grow exponentially given the new response requirements.

In summary, DNR assumes nineteen (19) professional-level FTE would be requested with an estimated fiscal impact of \$1.7 million annually to implement this proposal on a continuing basis.

In response to a previous version of this proposal, officials from the **Department of Social Services (DOS)** had the following assumptions from the proposal:

- 1: DOS-ITSD assumed the need for roughly \$98,000 in programming and data storage expenses.
- 2: The Family Support Division assumed the need for two FTE (an attorney to review agency rules one year prior to expiration and one support staff) in Fiscal Years 2014 and 2015.
- 3: Legal Services - expects an unknown fiscal impact beginning in FY 2013 greater than \$100,000. The process for promulgating administrative rules is quite lengthy since it entails close coordination between the applicable program division, departmental leadership and the Division of Legal Services.

In response to a previous version of this proposal, officials from the **Department of Health and Senior Services (DOH)** stated the long-range extent of the fiscal impact of the proposed legislation is unknown because the amount of staff time required to repromulgate expiring rules cannot be determined due to several contributing factors, including the length of the administrative rules process itself, the scope and reach of the rules that are being revised, and the amount of comments received on each individual rule. At a minimum, the process generally takes at least a year to complete. Rules may be delayed beyond this time frame due to unforeseen circumstances or if a rule is challenged through the Joint Committee on Administrative Rules. Significant staff resources could be required for re-promulgation of rules that require no changes.

ASSUMPTION (continued)

Currently DOH continuously reviews and amends rules as needed, in addition to adopting new rules when a need is identified. It is likely that a significant number of DOH's rules would at some point in the future fall under the 10 year termination provision. If rules related to fees were to lapse for any reason, there is the potential for an unknown negative impact on revenues in numerous funds including (but not limited to) General Revenue Fund, Mammography Fund, and Nursing Facility Quality Care Fund. DOH assumes the proposal would result in an unknown fiscal impact beginning in FY 2015.

In response to a previous version of the proposal, officials from the **Department of Economic Development - Public Service Commission (PSC)** stated the statute would require agencies to review and promulgate all rules on a rolling basis beginning in 2015. The PSC has hundreds of rules in effect and promulgates several rules each year required by legislation. It is difficult to determine at this time but PSC may need to hire an additional FTE or consultant to accomplish what will become a continuing obligation in 2015.

Oversight will reflect a potential negative fiscal impact from the new requirements within Section 536.041.2. The state agencies may be required to pay reasonable fees and expenses to a petitioner if the agency should have promulgated a rule, but did not. This award must be payable from amounts appropriated to the agency for the relevant fiscal year and the agencies may not request or be granted an additional appropriation of money in order to satisfy an award made under this section. Oversight, for the simplicity of the fiscal note, will show the impact as being to the General Revenue Fund.

Section 536.175 states that each agency shall periodically review all of its rules. The first scheduled review (of rules contained in titles 1 through 6 of the code of state regulations) shall begin July 1, 2015. Therefore, **Oversight** assumes this mandates agencies begin the review process of their rules starting in FY 2016 - which is outside the scope of this fiscal note. According to numerous agencies, additional expenses will be incurred during this review process, but Oversight will not reflect that cost within the three years covered in the fiscal note. Oversight assumes that due to the number of rules and the time required to adopt the rules, some agencies would need additional FTE and other resources. Oversight assumes that several different state funds would be affected by this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
GENERAL REVENUE			
<u>Costs - Various State Departments</u>			
Potential costs of paying petitioner's fees and expenses if the agency failed to adopt a rule (Section 536.041.2)	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Small businesses could be affected by a rule change.

FISCAL DESCRIPTION

This proposal modifies provisions regarding the updating and review of administrative rules. The Secretary of State is given the authority to make non-substantive changes to the Code of State Regulations to update state agency information, such as name or address changes.

This act provides that every state administrative rule shall be subject to a periodic review by the appropriate state agency every five years. The act creates a schedule for the periodic review of rules by their title in the Code of State Regulations. The Joint Committee on Administrative Rules (JCAR) shall cause notice to be published in the Missouri Register indicating the rules to be reviewed and also notice of the 60 day comment period. Each agency with rules under review shall prepare a report with the results of the periodic rule review. The report shall consider whether the rule: continues to be necessary or is obsolete; duplicates, overlaps or conflicts with other state, federal or local rules; needs changes or should be rescinded in order to reduce

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FISCAL DESCRIPTION (continued)

regulatory burdens on businesses, individuals or political subdivisions, or to eliminate unnecessary paperwork; and whether a less restrictive, more narrowly tailored rule could adequately protect the public or accomplish the same statutory purpose. For rules that affect small business, the agency must consider the specific public purpose or interest for adopting the rules and other reasons to justify its continued existence.

The subject agency must file its report with JCAR and the Small Business Regulatory Fairness Board within one year of beginning the review process. If the agency does not file the report, and does not receive an extension for good cause, then JCAR must notify the Secretary of State to publish notice in the Register as to the rules that are delinquent. The rules shall be void after 90 days in the Register unless the agency cures the delinquency by providing the required report within 90 days after publication in the Register.

If a petition is filed with an agency requesting the adoption of a rule, and the agency does not promulgate such a rule, and it is later found by an adjudicatory body that a state agency's statement of general applicability, which is the subject of the petition, should have been promulgated as a rule, then the adjudicatory body shall award the petitioner its reasonable fees and expenses. Such award shall come from existing appropriations to the agency, not an additional appropriation.

This act provides that when a court awards attorney fees and other expenses against a state agency, such agency cannot request an additional appropriation of money to satisfy such an award. Within thirty days of the judgement awarding the fees and expenses becoming final, the agency shall forward notification of the amount of awarded fees and expenses to the chairs of the House Budget Committee and the Senate Appropriations Committee.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

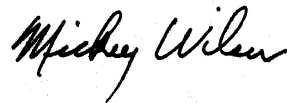
SOURCES OF INFORMATION

Office of the Secretary of State
Joint Committee on Legislative Rules
Office of Administration
Department of Social Services
Department of Revenue
Department of Natural Resources

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SOURCES OF INFORMATION (continued)

Office of the State Public Defender
Department of Agriculture
Department of Transportation
Missouri Ethics Commission
State Tax Commission
Administrative Hearing Commission
Office of the State Courts Administrator
Office of Prosecution Services
Department of Public Safety
Department of Corrections
Department of Higher Education
Department of Elementary and Secondary Education
Department of Economic Development
Missouri Lottery Commission
Department of Mental Health
Missouri Department of Conservation
Department of Labor and Industrial Relations
Missouri Gaming Commission
Department of Health and Senior Services
Attorney General's Office
Department of Insurance, Financial Institutions and Professional Registration



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